

**PARLIAMENT OF KENYA**  
**THE SENATE**  
**SENATE BILLS DIGEST**

**Issue No...../2018**

**THE COPYRIGHT (AMENDMENT) BILL (NATIONAL ASSEMBLY  
BILLS NO. 33 OF 2017)**

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**Sponsor:** Senate Majority Leader.  
**Date of Publication:** 18<sup>th</sup> September, 2017.  
**Date of First Reading:** 12<sup>th</sup> September 2018.  
**Committee referred to:** Standing Committee on Information and Technology.  
**Type of Bill:** Ordinary Bill.

**1. BACKGROUND AND PURPOSE OF THE BILL**

The Copyright Act was enacted in the year 2001 and been amendment on various occasions. The main purpose of the Copyright Act is to provide for copyright in literary, musical and artistic works, audio-visual works, sound recordings and broadcasts.

The Copyright (Amendment) Bill 2017 was passed by the National Assembly, with amendments, on 25<sup>th</sup> July, 2018. The Bill was forwarded to the Senate for consideration in accordance with Article 110(4) of the Constitution.

The main purpose of this Bill is to incorporate new provision into the Copyright Act for the domestication of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (the Marrakesh Treaty), to provide for Internet Service Provider Liability, to provide for resale royalty right and to align the Copyright Act to the Constitution.

## **2. OVERVIEW OF THE BILL**

The Marrakesh Treaty is an international agreement negotiated and adopted by member States on 23<sup>rd</sup> June, 2013 in Marrakesh, Morocco and entered into force on 30<sup>th</sup> June, 2016. The main purpose of the Marrakesh Treaty is to allow the making of copies in an accessible format of copyrighted works with a view to facilitate access to books and other copyrighted works for visually impaired persons. The treaty also seek to permit exchange of such copies across borders by institutions that serve the visually impaired persons.

The Copyright Act has not made provision with respect to liability of Internet Service Provider for violation of copyright or related rights. The Bill sets out when an Internet Service Provider may be held liable for copyright infringement. It also sets out the steps to be taken whenever rights are alleged to have been infringed by content whose access is provided by an Internet Service Provider, and the role of the Internet Service Provider and the courts in matters copyright infringement.

Whereas the Copyright Act provides for royalty a copyright owner is to be paid, the same has not been defined and is not clear. This Bill seeks to provide for resale royalty right by defining what it is, who is entitled to it, and that the right shall cannot be waived under any circumstances. It also mandates the Kenya Revenue Authority to collect such royalties on behalf of collective management organisations.

Related to royalty is collective administration of copyright. This is provided for under Part VII of the Copyright Act. In the current law, it is provided that the Board shall issue a certificate to an organization which intends to carry out the business of a copyright collecting society. This Bill seeks to replace collecting societies with collective management organisations. Importantly, the Bill seeks to introduce standards for governance of collective management organisations. This include setting out minimum qualifications for directors of these organisations.

The promulgation of a new Constitution brought with it new concepts in Kenya, established offices, abolished some offices, among other good things. In matters

concerning copyright, offices such as Auditor-General, Inspector-General of Police, and the Director of Public Prosecutions play a role in one way or another. As such, the current law require amendments with a view to align it to the Constitution.

The Bill also seeks to –

- a) establish a tribunal responsible for determining disputes over registration of copyright, and refusal by the Kenya Copyright Board to register a collective management organization;
- b) amend provisions dealing with offences for purposes of ensuring clarity and providing for offences by bodies corporate which are not provided in the current law;
- c) provide for a register of copyright works; and
- d) qualifications and appointment of the executive director of the Kenya Copyright Board.

### **3. WAY FORWARD**

Pursuant to standing order 140(5), the Standing Committee on Information and Technology shall facilitate public participation and shall take into account the views and recommendations of the public when the Committee submits its report to the Senate. Standing order 140(1) requires that the report of the Committee be submitted to the Senate within a period of thirty (30) calendar days of the committal of the Bill to the Committee. The thirty days lapses on 12<sup>th</sup> October, 2018.

Any comments on the Bill may be submitted to the Office of the Clerk of the Senate, 1<sup>st</sup> Floor, Main Parliament Buildings, Nairobi, Kenya through P.O Box 41842-00100, Nairobi, Kenya or email: [senatebills@parliament.go.ke](mailto:senatebills@parliament.go.ke).

Note:

1. This Digest reflects the Bill as published and does not cover any subsequent amendments to the Bill after publication.
2. The Digest does not have any official legal status.